

**Before a Hearings Panel appointed
by the Selwyn District Council**

Under

the Resource Management Act
1991

And

In the Matter

of a submission (DPR-0396) and
further submission on the Proposed
Selwyn District Plan by Woolworths
New Zealand Limited

**Legal Submissions for
Woolworths New Zealand Limited on
Topic 1 – Strategic Directions**

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MAY IT PLEASE THE HEARINGS PANEL:

INTRODUCTION

1. These legal submissions are presented on behalf of Woolworths New Zealand Limited (**Woolworths**).
2. Woolworths made a submission (DPR-0396) and further submission on the Proposed Selwyn District Plan (**PDP**).
3. In summary, Woolworths does not support the PDP as notified as a whole. Woolworths' key concerns are that:
 - (a) The PDP does not provide sufficiently for growth, especially in the limited opportunities provided for business activity.
 - (b) The PDP should adopt a "centres plus" approach to certain business activity, with flexibility for out of centre development where activities can demonstrate a functional need for that location. This should include appropriate activity status for supermarkets both within and outside the Centre zones.

SCOPE OF SUBMISSIONS

4. The purpose of these submissions is largely to set the scene for Woolworths' involvement in subsequent hearing topics, including, in particular, Urban Growth (Topic 3) and Commercial and Mixed Use Zones (Topic 23). Evidence in support of Woolworths' submission points and more detailed legal submissions will be presented for those hearing topics.
5. These submissions accordingly address:
 - (a) Woolworths and its interests in the Selwyn District;
 - (b) Woolworths' overall position on the PDP;
 - (c) Woolworths' position on the Strategic Directions Chapter; and
 - (d) Response to the Section 42A Reports.

WOOLWORTHS BACKGROUND

6. Woolworths is one of New Zealand's leading supermarket brands. Nationwide, Woolworths currently operates over 180 Countdown stores and has a portfolio of over 70 franchisee stores operating under the Super Value and Fresh Choice brands. Woolworths employs around 20,000 people across New Zealand, making it one of the country's largest private sector employers.
7. In the Selwyn District, Woolworths operates a Countdown supermarket in Rolleston and is the franchisor for Fresh Choice stores in Leeston and Prebbleton.
8. Woolworths is continually identifying areas and communities that have a need for, and would benefit from, additional supermarket services. Woolworths is currently considering development proposals in the Selwyn District in response to demand caused by the above-average growth experienced in and forecast for the District. Woolworths is also working to address gaps in its network or to upgrade existing operations, and to respond to changes in customer shopping requirements.
9. As has been clear during the Covid-19 pandemic, supermarkets are essential services, as well as being economic drivers and catalysts for well-functioning urban environments. Functional need and catchment drivers often dictate the location of supermarket operations on the fringe or, in some cases, outside of identified centres. Given their important role, the establishment or redevelopment of supermarkets needs to be provided for accordingly in the PDP.

OVERALL POSITION

10. Woolworths' overall position on the PDP is that it should be adaptive and responsive to growth and demand and to evolving retailing in order to achieve the most appropriate outcomes for the District and its communities.
11. In our submission, put simply, the PDP as notified is not adaptive and responsive. This is apparent in two key areas.
12. Firstly, in our submission, the PDP does not provide sufficiently for growth. It is widely recognised, including by Selwyn District Council (**Council**) itself,

that Selwyn is one of New Zealand's fastest growing Districts, second only to the Queenstown Lakes District. Business activity is an essential part of the overall growth of the District, yet this is not reflected in the limited opportunities for new business activity in the PDP. The Council's capacity assessment in support of this approach is only in the short-term. In addition, it is at odds with both the Greater Christchurch Partnership's capacity assessment and, most importantly, the requirements of National Policy Statement on Urban Development 2020 (**NPS-UD**).¹

13. In our submission, the Hearings Panel should include more aspirational provisions for growth in the PDP. The strategic process of a plan review is the opportunity to comprehensively and sustainably plan for, enable and respond to growth.
14. Secondly, the PDP takes a rigid "centres" approach to business activity. There is no doubting the important role that town centres play as the primary focal point for business activity in the District. However, in our submission, a "centres plus" approach that incorporates a more flexible regime for out of centre development in necessary and appropriate circumstances should be adopted. This is essential to enable activities in the right locations and to create and support well-functioning urban environments. This is also consistent with the higher order direction in the Canterbury Regional Policy Statement 2013 (**CRPS**)² and the approach taken in other District Plans across New Zealand, including in Christchurch, Dunedin and Auckland.³
15. In addition, the "centres" approach in the PDP as notified does not provide appropriately for supermarkets, especially in those Centre zones lower in the hierarchy. To support the "centres plus" approach, the PDP needs to provide for the appropriate activity status for supermarkets both within and outside the Centre zones.
16. In our submission, changes are required throughout the PDP in order to address Woolworths' key concerns, as outlined above.

¹ Woolworths Submission (DPR-0396), dated 11 December 2020, paragraphs 13(d) and 16.

² Woolworths Submission (DPR-0396), dated 11 December 2020, paragraph 13(c).

³ Under the Christchurch Replacement District Plan, Dunedin 2nd Generation District Plan and Auckland Unitary Plan.

STRATEGIC DIRECTIONS CHAPTER

17. Despite its position on the PDP as a whole, Woolworths supports the structure and contents of the Strategic Directions Chapter in the PDP.
18. The Strategic Directions Chapter plays an important role in setting the overall strategic direction of the planning framework and providing guidance on the desired “big picture outcomes”. The aspects supported include:
 - (a) The Strategic Objectives relating to District Identity, including those supporting the District’s wellbeing and prosperity (SD-DI-02) and the vibrancy and viability of activity centres (SD-DI-05); and
 - (b) The Strategic Objectives relating to Urban Form and Development, including that there is sufficient feasible development capacity to meet anticipated demands for housing and business activities (SD-UFD-02).
19. In our submission the Strategic Directions Chapter as notified (including SD-DI-01, SD-DI-05 and SD-UFD-02) sets an appropriate framework to address Woolworths’ concerns, as outlined at paragraphs 12-15 above.
20. However, it is the implementation of these strategic provisions in the Urban Growth Chapter and at the Zone level that is the cause for concern and therefore will be the focus of Woolworths’ evidence and more detailed legal submissions through the hearings process.
21. In essence, the Strategic Objectives are agreed but the objective, policy and rule framework in the other chapters does not achieve or implement them. This includes a lack of policy support for supermarkets in the Commercial zones and inappropriate activity status for supermarkets across all zones. Without amendments, Woolworths is concerned that the Selwyn District will not be able to achieve the ambitious Strategic Objectives.

RESPONSE TO SECTION 42A REPORTS

22. This section responds to the Section 42A Overview Report (**Overview Report**) and the Section 42A Report on the Strategic Directions Chapter, both prepared by Robert Love and dated 9 July 2021.

23. The Overview Report correctly identifies the requirement for the PDP to give effect to the NPS-UD and CRPS and sets out the issues identified in the Council's Section 32 Reports that the PDP is intended to address, including:
- (a) Providing adequate land for housing and business development, especially given Selwyn's place as one of the fastest growing districts in New Zealand;
 - (b) Being enabling of expected activities; and
 - (c) Ensuring the adequate provision of services required by the community.
24. In our submission, as outlined at paragraphs 12-15 above, the PDP as notified as a whole does not give effect to these requirements. Changes are required to the Urban Growth and Zone provisions in order to do so.
25. The Overview Report explains the impetus for the change in approach from the Operative Selwyn District Plan (**ODP**). The ODP is designed around an effects-based framework, where only some activities are specified and activities are largely assessed based solely on their effects. It is acknowledged that from a plan user perspective, the ODP is unwieldy and lacks certainty and a strategic focus. In our submission, the move under the PDP to an activities-based framework is appropriate.
26. However, in our submission, the PDP as notified goes a step too far in adopting a "direct and control" model of setting commercial land supply and its use. As the High Court has emphasised, the Resource Management Act 1991 signalled a major change away from the "direct and control" emphasis of the previous legislative regime to the sustainable management of resources.⁴ The resource management issue to be resolved through the PDP is the enablement of activities in the right locations. This needs to be achieved by way of a sufficiently flexible planning framework, consistent with most relevant District Plans elsewhere in New Zealand.



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⁴ *Meridian Energy Limited v Southland District Council* [2014] NZHC 3178 at [23].